IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14171 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMTIRTH @ PRADHANSING UDAYBHANSING RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14171 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 13/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. MR Prajapati for the

petitioner detenu and ld. AGP Ms. Punani for the State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 09.05.2004 passed by the Police Commissioner, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "dangerous person" as defined under Sec.2(c) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has relied on two criminal cases registered against the detenu between being I.CR No. 128/2003 registered on 3/4.10.2003 and I.CR No. 1/2004 registered on 1/2.01.2004, both at Sachin Police Station under Sections 379, 114 of Indian Penal Code for committing theft of electric aluminium wires worth Rs.48,000/ and Rs.24,300/ respectively as mentioned in the tabular form shown on page no.1 of grounds of detention conveyed to the detenu while executing the order of detention.

4. The impugned order of detention is assailed on number of grounds, but ld. counsel Mr. Prajapati for the petitioner detenu has focussed only on one ground that the impugned order of detention is liable to be quashed on the ground of delay in passing the order of detention. It is argued that the detenu was arrested first in connection with second offence being I.CR No.1/2004 on 02.01.2004 and thereafter he was implicated in the first offence being I.CR No. 128/2003 allegedly committed on 3/4.10.2003 by drawing formal arrest panchanama on 05.01.2004. He was enlarged on bail by the competent Court on 27.01.2004 in both the cases. However, after a lapse of about 4 months, the sponsoring authority recorded statements of two different persons who have claimed privilege of secrecy on 06.05.2004 which statements came to be verified by the detaining authority on 08.05.2004. It is argued that these statements have been recorded mechanically only with a view to obtain order of preventive detention and papers were placed and immediately on the next day i.e. 09.05.2004, the order of detention is passed. So, one of the arguments raised is also that the order of detention under challenge is passed mechanically, without application of mind and in hot haste. However, the main argument is that the order

of detention is passed at a belated stage which would go to the root of the validity of the detention order. This Court, in number of decisions has held that the date of registration of last offence would be relevant for the purpose of delay in passing the order of detention. In the instant case, last case registered against the detenu is on 01/02.01.2004 and order of detention is passed on 09.05.2004. There there is a gross delay of about 4 months and 8 days in passing the order of detention. Even recording of statements of witnesses by the sponsoring authority is on 06.05.2004 i.e. after about 4 months and 5 days. There is no explanation given either by the sponsoring authority or by the detaining authority for such delay. So, on this ground alone, impugned order of detention requires to be quashed and set aside.

5. However, as observed earlier, there is hot haste in passing the order of detention which suffers from non-application of mind and mechanical exercise of powers and hence the ratio of the ratio of the decision of this Court in the case of Ranubhai Bharwad (Vekaria) v/s State of Gujarat & Ors., 2000(3) GLR 2696 would help the petitioner-detenu. It is not necessary to reproduce relevant para-9 of the said decision, but in the facts and circumstances of the case, I am of the opinion that the ratio of the above-cited decision would squarely cover the case of the present petitioner and hence petition requires to be allowed. So, on both the grounds, impugned order of detention requires to be quashed and set aside.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 09.05.2004 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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